

ORDINANCE NO. 2008-XXXX

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF IMPERIAL BEACH,  
CALIFORNIA, AMENDING TITLE 19 (ZONING) BY ADDING CHAPTER 19.63 (SMOKE  
SHOPS; TOBACCO AND TOBACCO PARAPHERNALIA RETAIL) M.F. 981**

**WHEREAS**, on xxxx, 2008, the City Council of the City of Imperial Beach held a duly advertised public hearing to consider the merits of adding Chapter 19.63 (Smoke Shops; Tobacco and Tobacco Paraphernalia Retail) to Title 19 (Zoning) of the Imperial Beach Municipal Code and public testimony has been heard and considered; and

**WHEREAS**, the City Council finds that the amendment is consistent with the General Plan and is in substantial compliance with Policy L-4 of the Land Use Element of the General Plan/Local Coastal Plan, which seeks to protect residential areas and promote commercial development that enhances the city's tax base, its economy and quality of living; and

**WHEREAS**, the City Council of the City Of Imperial Beach hereby finds that the proposed Zoning Ordinance Amendment, pursuant to Government Code Section 65860, is externally consistent with the General Plan/Local Coastal Plan; and

**WHEREAS**, The City Council of the City of Imperial Beach finds and determines that the proliferation of tobacco shops and smoke shops in the commercial areas of the city of Imperial Beach has a deleterious affect on the vitality of a strong business area, removing from the stock of commercial properties those properties that could be better utilized for local retail operations that would complement the existing and future commercial activities; and

**WHEREAS**, The City Council of the City of Imperial Beach finds and determines that the over-concentration of tobacco shops and smoke shops would create a type of character in the city's commercial areas, preventing the diversification of permitted and conditionally permitted uses in the city's commercial areas; and

**WHEREAS**, The City Council of the City of Imperial Beach finds and determines that on-site advertising of tobacco products and tobacco paraphernalia tends to create unsightly commercial operations, which businesses are aesthetically displeasing and tend to contribute to visual blight; and

**WHEREAS**, The City Council of the City of Imperial Beach finds and determines that the over-concentration of tobacco shops and smoke shops would tend to attract groups of visitors who would tend to loiter outside such shops, creating health hazards from secondhand smoke in the congregation of their patrons, and further creating safety hazards when loitering in an area of such shops; and

**WHEREAS**, this project complies with the requirements of the California Environmental Quality (CEQA) as this project would be exempt pursuant to CEQA Guidelines Section 15061.b.3 entitled Review for Exemption, where it can be seen with certainty that this project would not have a significant effect on the environment as the proposed amendment would require that applicants for smoke shops obtain a conditional use permit that would be evaluated for environmental and land-use impacts pursuant to CEQA.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF IMPERIAL BEACH DOES ORDAIN AS FOLLOWS:**

**SECTION 1:** That **Chapter 19.63**.be **added** to read as follows:

**19.63.005 Purpose.**

The purpose of this chapter is to regulate the location and operation of retail purveyors of tobacco products and tobacco paraphernalia in the City of Imperial Beach in order to maintain the city's character, the diversity and vitality of the community's commercial areas, and the quality of life of Imperial Beach residents.

**19.63.010 Definitions.**

The words and terms used in this chapter shall have the meanings as provided in this section. Where words or terms are not defined in this section they shall have the meanings ordinarily ascribed to them or as may be further defined in chapter 19.04 of this code. Should any word, term or phrase defined in this section conflict with any other word, term or phrase defined in this code, the definitions provided in this section shall apply.

"Advertising" means printed matter that calls the public's attention to things for sale.

"Business" means any sole proprietorship, joint venture, corporation or other business entity formed for profit-making purposes, including retail establishments where goods or services are sold, as well as professional corporations and other entities where legal, medical, dental, engineering, architectural or other professional services are delivered.

"City Manager" means the City Manager of the City or the City Manager's designee.

"Creation of a tobacco shop" means the opening or commencement of any tobacco shop as a new business, the relocation of any tobacco shop, or the conversion of an existing business to a tobacco shop.

"Employee" means any person who is employed by any employer for consideration for direct or indirect wages or profit.

"Minor" means any individual who is less than eighteen years old.

"Public recreation area" means an area to which the public, and particularly minors, comes to participate in athletic or recreational activities, whether or not such activities are supervised or organized. Such areas include, but are not limited to, publicly owned and maintained parks, athletic fields, playgrounds, picnic areas, any outdoor premises or grounds owned or operated by the city, a public or private school, child care center, and any youth or recreational facilities such as the Boys' and Girls' Club, YMCA and YWCA, that contains any play or athletic equipment used or intended to be used by minors.

"Tobacco paraphernalia" shall have the definition set forth in section 4.56.010 of the code.

"Tobacco product" shall have the definition set forth in section 4.56.010 of the code.

"Tobacco shop" means any store, stand, booth, concession, or other place that either devotes a substantial portion of its display area (fifteen percent or more of floor space) to tobacco products or tobacco paraphernalia, or devotes more than sixteen cubic feet of shelf space, for the display or sale of tobacco products or tobacco paraphernalia to purchasers for consumption or use. "Tobacco shop" includes smoke shops.

"Tobacco vending machine" means any electronic or mechanical device or appliance the operation of which depends upon the insertion of money, whether in coin or paper currency, or other things representative of value, that dispenses or releases a tobacco product.

"Zoning Ordinance" means Title 19 of the Municipal Code of the City of Imperial Beach, as it may be amended from time to time.

#### **19.63.020 Conditional Use Permit required.**

No person shall cause or permit the creation or substantial enlargement of any tobacco shop without first obtaining and maintaining a conditional use permit.

#### **19.63.030 Conditional Use Permit—Issuance criteria.**

The Planning Commission shall include the following criteria in its consideration of whether to grant a conditional use permit:

A. The tobacco shop will be located within a permitted zone. Tobacco shops may be located only within the C-1 (General Commercial) zone(s). No such business shall be permitted to locate in any area outside such zoning classifications.

B. The tobacco shop will meet the following minimum spacing and proximity requirements:

1. No tobacco shop shall be located within one thousand feet of any other tobacco shop.

2. No tobacco shop shall be located within five hundred feet of any parcel of land zoned for residential use.

3. No tobacco shop shall be located within six hundred feet of any parcel of land that contains any one or more of the following specific land uses:

- a. Church;
- b. Public recreation area;
- c. School.

4. Nothing in this chapter prohibits the location of tobacco shops within retail shopping centers in the above-specified commercial zones if such activities have their only frontage upon enclosed malls or malls isolated from direct view from public streets, parks, schools, churches or residentially zoned property. The spacing requirements in this subsection above shall apply to tobacco shops located within such a mall.

C. The tobacco shop is in substantial compliance with the requirements of all health and safety codes, including, but not limited to, the building code, fire code, electrical code, mechanical code and plumbing code. Unless delay is caused by refusal of applicant to schedule or permit timely inspection, substantial compliance shall be verified no later than thirty days following the application or the applicant shall be deemed to be in substantial compliance with such requirements for the purposes of permit issuance.

D. The tobacco shop is in substantial compliance with the development standards for the commercial zone in which the establishment is to be located, and with the general provisions of Title 19 relating to development standards and of chapter 19.52 relating to sign regulations, except that to the extent that provisions of this chapter may conflict or be more restrictive this chapter shall control.

E. The tobacco shop has or is concurrently obtaining a tobacco retailer's license pursuant to chapter 4.56 of the code.

F. Chapter 19.84 of this title relating to variances shall be of no force and effect when considering an application for a conditional use permit.

#### **19.63.040 Conditional Use Permit—Approval conditions.**

Conditional use permits shall be granted subject to the following conditions, in addition to any other conditions imposed by the Planning Commission, which shall be incorporated into the granting resolution:

1. No tobacco shop located in a building sharing one or more common walls with another retail or commercial establishment, or sharing common attic space with any other use, shall permit smoking anywhere on the premises.
2. No more than 10 percent of the floor area devoted to the sale or display of tobacco products and paraphernalia may consist of tobacco paraphernalia.
3. The final plans and the development and operation of the smoke shop shall be in substantial compliance with the stipulations of the conditional use permit and with the conceptual plans approved by the Planning Commission.
4. Applicant shall obtain a city business license prior to use in reliance of the conditional use permit.
5. Approval of this request shall not waive compliance with any portion of the Uniform Building Code and Municipal Code in effect at the time the permit is issued and vested.
6. All negative balances in the project account shall be paid prior to use of the permit.
7. Approval of the conditional use permit is valid for a one year **vesting** period from the date of approval. Conditions of approval must be satisfied, building permits issued, and substantial construction or use in reliance must have commenced prior to this date, or a time extension is granted by the City prior to expiration. This expiration date is separate from the sunset expiration date of 10 years for the life of the conditional use permit.

8. Conditional use permits for smoke shops have a maximum term of ten (10) years. The applicant will be required to renew the Conditional Use Permit prior to the **expiration** date.

#### **19.63.060 Permit revocation.**

A conditional use permit shall be subject to revocation, after a public hearing in accordance with chapter 19.82, if any of the following grounds exist:

- A. The permit was obtained by fraud;
- B. The use for which such permit was issued is not being substantially exercised;
- C. The use for which such permit was issued has ceased to exist or has been suspended for one year or more;
- D. The permit is being, or recently has been, exercised contrary to its terms or conditions, or in violation of this or any other title of this code, or in violation of any other ordinance of the city.

#### **19.63.080 Conflicts with other applicable laws.**

This chapter shall not be interpreted or construed to permit tobacco vending machines and distribution of tobacco product samples where they are otherwise restricted by other applicable laws. Nor shall this chapter be construed to be cause for breach of any pre-existing private contract, or cause for interference with regulations imposed by state or federal law or related to interstate commerce.

**SECTION 2:** This ordinance shall become effective only when certified by the California Coastal Commission but not sooner than thirty (30) days following its passage and adoption by the City Council.

**SECTION 3:** The City Council of the City of Imperial Beach hereby declares that should any section, paragraph, sentence, phrase, term or word of this Ordinance, hereby adopted, be declared for any reason to be invalid, it is the intent of the City Council that it would have adopted all other portions of this Ordinance irrespective of any such portion declared invalid.

**Appeal Process under the California Code of Civil Procedure (CCP):** The time within which judicial review of a City Council decision must be sought is governed by Section 1094.6 of the CCP. A right to appeal a City Council decision is governed by CCP Section 1094.5 and Chapter 1.18 of the Imperial Beach Municipal Code.

**INTRODUCED AND FIRST READ** at a regular meeting of the City Council of the City of Imperial Beach, California, held the \_\_\_ day of \_\_\_, 2008; and thereafter **PASSED AND ADOPTED** at a regular meeting of the City Council of the City of Imperial Beach, California, held on the \_ day of \_\_\_, 2008, by the following roll call vote:

**AYES:** COUNCILMEMBERS:  
**NOES:** COUNCILMEMBERS:  
**ABSENT:** COUNCILMEMBERS:

*James C. Janney*

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**JAMES C. JANNEY, MAYOR**

**ATTEST:**

*Jacqueline Hald*

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**JACQUELINE HALD, CITY CLERK**

**APPROVED AS TO FORM:**

*James P. Lough*

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**JAMES P. LOUGH, CITY ATTORNEY**

I, City Clerk of the City of Imperial Beach, do hereby certify the foregoing to be a true and exact copy of Ordinance No. 2008-XXXX - An Ordinance of the City of Imperial Beach amending Title 19 (Zoning) by adding Chapter 19.63 (SMOKE SHOPS; TOBACCO AND TOBACCO PARAPHERNALIA RETAIL) of the Imperial Beach Municipal Code.

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**CITY CLERK**

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**DATE**